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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108*

Advisory Opinion

April 18, 2001

AO-01-05

David E. Sullivan
Counsel to the Senate
State House - Room 200
Boston, MA 02139

Re: Links from the Official General Court Website to Members' Private Websites

Dear Mr. Sullivan:

This letter is in response to your February 26, 2001 request for an advisory opinion as to whether the Senate Clerk may permit members to link their private websites to the website of the General Court.

You have stated that the Senate Clerk maintains an Internet website for the General Court, which includes considerable information of public interest about the Legislature and Massachusetts law. The website also includes a page for each legislator containing certain basic information, including office address and telephone number, biographical information, the composition of the legislative district, and committee assignments.

Some Senators maintain private websites in addition to the official website. You have stated that these websites typically include information about Senators' positions on issues and constituent service activities, as well as campaign information. A number of Senators have asked the Clerk to link their private website to the member's official web page. This would enable visitors to the General Court site to access the private sites simply by clicking on the corresponding link on the official web page.

In October 2000, you sought informal advice from this office regarding the propriety of the links under the campaign finance law. You were advised, in accordance with AO-96-04, that private links were permissible on the official website so long as a disclaimer appeared along with the link. After consultation with this office you drafted the following disclaimer, "You are now leaving the official website of the Massachusetts General Court. The website that you are entering is privately maintained and is not part of the official legislative website." You have stated that this disclaimer has, in fact, been posted next to all private links appearing on the legislative site pursuant to member

requests. As the result of concerns subsequently expressed about the links, the Senate Clerk has discontinued the links pending further guidance.

Question

Can the Senate Clerk place links to its members' private websites on the General Court website if the link is accompanied by a disclaimer?

Answer

The Senate Clerk may provide links to members' private websites if the name of the website, the text of the link, or the web address (URL) do not advocate a particular vote and the content of the private website is limited to information for constituents. The General Court website should not, however, provide any links to private sites which (1) solicit contributions, votes or volunteers; or (2) contain express advocacy supporting or opposing any candidate, party or ballot question.

Discussion

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election. In so ruling, the Court noted that a central purpose of the campaign finance law is to keep government and politics separate by assuring that political fundraising is "kept out of the hands of nonelective public employees and out of city and town halls." Id. at 187. As the Court explained, "the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote ... Fairness and the appearance of fairness are assured by a prohibition against using public tax revenues to advocate a position which certain taxpayers oppose." Id. at 195.

As the result of this opinion, governmental entities may not expend public resources¹ or contribute anything of value to support or oppose any candidate, party or ballot question. See IB-91-01. Absent a general or special law to the contrary, campaign activity using public resources is not permitted. Accordingly, the General Court website should not post a link to any website which (1) solicits contributions, votes or volunteers; or (2) contains express advocacy supporting or opposing any candidate, party or ballot question. Moreover, the inclusion of a link to an otherwise permissible website would not be appropriate under Anderson if the link or web address contained express advocacy on its face (for example www.electDoe2002.com).

Consistent with Anderson, however, the campaign finance law should not be interpreted in a manner that would frustrate the right of voters to have access to their elected public officials. The Internet is an invaluable resource for citizens interested in contacting government agencies for information. See AO-00-12 (advising a municipality that it was appropriate to post material regarding ballot questions on its official website). In this regard, the inclusion of a link to a website

¹ Public resources include, but are not limited to: staff time, office space, stationery and office supplies, and office equipment such as telephones, copier and fax machines and computers. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided.

that is void of campaign material cannot be considered an inappropriate use of governmental resources.

In 1996, this office advised the City of Cambridge in AO-96-04 that it could provide links from the city's official website to the city councilors' homepages, with a disclaimer that the linked sites are privately maintained and may contain opinions or positions that are not those of the city or the majority of the council.

In the years since the Cambridge opinion, there has been an increase in campaign websites on the Internet, complementing traditional campaigning methods. Last year the campaign finance law was changed to allow candidates and political committees to receive contributions by credit card (Chapter 159 of the Acts of 2000). Campaign websites that seek votes, volunteers and campaign contributions have become common, as the Internet has become an increasingly valuable fundraising tool for candidates and committees. With the issuance of this opinion, this office is clarifying the Cambridge opinion and advising that the General Court may not, consistent with Anderson, link its official page to any sites with these types of campaign components.

On the other hand, allowing links to informational websites that are void of campaign material would not involve the use of public resources to advocate any particular party or candidate. As we stated in AO-96-04, these types of links enable elected officials to provide additional services and information to interested constituents without implicating Anderson. Confusion as to the source and funding of the informational websites or any appearance of impropriety will be minimized, if not eliminated, by a disclaimer. The campaign finance law, therefore, would not preclude the Senate Clerk from reinstating links to purely informational sites.

Please note that this opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director